

**COMPLIANCE BOARD OPINION NO. 00-1**

February 2, 2000

*Mr. John H. Kitchings, Jr., Esquire*

You have filed a complaint alleging that the meeting practices of the Town of Capitol Heights violated the Open Meetings Act. For the reasons stated below, the Open Meetings Compliance Board is unable to render an opinion about the complaint's merits.

Your complaint, dated August 1, 1999, cited 17 instances in which you alleged that the Town had violated the Act. On August 5, 1999, the Compliance Board sent your complaint to the Mayor of Capitol Heights, pointing out that the Town was required by §10-502.5(c)(2) of the State Government Article to file a written response to the complaint within 30 days of its receipt of the Compliance Board's letter.

By letter dated September 3, 1999, the Town Attorney responded to the complaint by stating, in pertinent part, as follows:

The Town of Capitol Heights has at all times complied or attempted to comply with the Open Meetings law. All closed sessions of the Town Coun[cil] Meetings were permitted pursuant to MD Code Ann. State Gov't. Art. §10-508.... All Town meetings that were closed were closed in accordance with Maryland law. Mr. Kitchings claims are without any merit whatsoever. If there was a failure of notice it was direct result of Mr. Kitchings' failure to provide such notice.<sup>1</sup>

Faced with the breadth of your complaint and the generality of the Town's response, by letter of October 8, 1999, the Compliance Board informed you that your complaint and the Town's response did "not provide the Compliance Board with a sufficient basis to apply the Act to particular facts." The Board suggested that:

In order to focus this matter and to enable the Board to address the substantive issues, you select from your list of alleged violations a small number that you regard as

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<sup>1</sup> The last sentence refers to the fact that you had served as Town Administrator during this period.

the most serious and that typify what you contend is a pattern of violations. As to the ones you so identify, please provide the Board with the material you consider will substantiate the allegations. After you do so, the Board will request a specific and detailed response from the Town about those allegations.

You responded with material that you contended supported your allegations.<sup>2</sup>

By letter of October 29, 1999, the Compliance Board provided the Town with your submission and requested “a response from the Town regarding the legal basis for the following ‘executive sessions,’ a term which the Board assumes means that these sessions were closed to the public ....” The Board then identified meetings on 17 dates. The Board explained the response sought from the Town:

The Town should indicate whether its position is that the Open Meetings Act did not apply to some or all of these meetings and, if so, explain the basis for that position. If the Town acknowledges that the Act did apply to some or all of these meetings, the Town should indicate for each meeting whether the notice requirements of the Act were met, what the legal basis was for closing the meeting, whether the Act’s procedural requirements for closing the meeting were satisfied, and whether the Town complied with the Act’s requirement for disclosure of a summary of what occurred at each closed meeting. Documentation of compliance would be especially helpful.

By letter of November 4, 1999, the Town Attorney wrote as follows: “I have forwarded your correspondence to the Town Administrator ... for answers to your specific requests. I will respond to you when I receive this information. I will be out of my office from November 4 until November 12. I hope to have the requested information by that time.”

By letter of December 7, 1999, the Compliance Board pointed out that no response from the Town had been received and requested from the Town Attorney information on when a response would be forthcoming. By letter of December 11, 1999, the Town Attorney indicated that he did not have various documents and, owing to a busy travel schedule, had been unable to meet with Town officials.

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<sup>2</sup> Some of your allegations concerned matters beyond the scope of the Open Meetings Act, and the Compliance Board had made clear from the outset that it would not address allegations beyond its jurisdiction.

However, he stated that he had scheduled a meeting with the Town Administrator “for Monday, December 20 to obtain information to respond in detail to your request.” Despite this assurance, the Compliance Board has received nothing further from the Town.

Under §10-502.5(c)(3), if a public body has not responded to a complaint within 45 days of its receipt of the complaint, the Compliance Board “shall decide the case on the facts before it.” Another provision in this section, however, authorizes the Compliance Board to issue an opinion stating “that the Board was unable to resolve the complaint.” §10-502.5(f)(2).

The Board is unable to resolve your complaint. You have made a series of sweeping allegations that the Town lacks sufficient justification to close meetings and otherwise violated its obligations under the Act. Without a substantive response from the Town, the Compliance Board lacks the information on which to judge whether the Act was indeed violated, as you allege, in all or some of the instances that you cite. Therefore, the Compliance Board can express no opinion on the substance of your complaint.<sup>3</sup> The Compliance Board does find, however, that the Town of Capitol Heights violated the Act through its failure to respond properly to your complaint.

OPEN MEETINGS COMPLIANCE BOARD

*Walter Sondheim, Jr.*  
*Courtney McKeldin*  
*Tyler G. Webb*

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<sup>3</sup> As you may be aware, a complaint to the Compliance Board is not the exclusive remedy for a person who believes that the Act has been violated. A person who is “affected adversely” by an alleged violation may seek judicial review under §10-510 of the State Government Article.